



Archana Patekar Vs. Vikas Bhageriya & Ors.

ORDER ON EXHIBIT NO.5

This is an application filed by the plaintiff/applicant under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure(C.P.C.) for temporary injunction restraining the defendants/non-applicants from alienating, entry, measurement, construction and creating third party interest, so also from interfering or disturbing her possession over the land No.13/10 admeasuring, 1H. 61R. situated at village Chandergaon, Tal-Sudhagad Dist-Raigad-Alibag(hereinafter as “suit property”) till the disposal of suit. Non-applicants No.1, 2 and 7 filed their say at Exh.No. 66 and 76.

02) Heard both parties at length.

03) On perusal of application alongwith say and documents filed on record following points arise for my determination and I answer them for the reasons next to follow.

Sr. No.	Points	Findings
1)	Whether applicant has a prima facie case?	..No.
2)	Whether balance of convenience lies in favour of applicant?	..No.
3)	Whether irreparable loss will be caused to applicant, if injunction is not granted?	..No.
4)	What order?	Application is rejected.

:: REASONS ::**AS TO POINT NO.1:**

04) It is the case of the plaintiff that, suit property is ancestral property. It is originally owned and possessed by the father of plaintiff namely Khema Parsu Kadam, which is four-bonded as to east-field of land No.13/11, to west-field of land No.13/9 and 13/6, to south-field of land No.13/5 and to north-field of land No.13/8 and 13/12. She alleged that, suit property is occupied by her father under section 32(G) of the Bombay Tenancy and Agricultural Act by depositing requisite fees to the State. She further alleged that, her father died on 01/01/2019, so as the legal heir of her father she got right in the suit property. She further alleged that, she came to know that defendant No.2 trying to sell the suit property.

05) She further alleged that, defendant No.2 to 9 illegally and in collusion with Revenue officers obtained mutation entry No.589 in the year 1987. As per the mutation entry No.589 defendant No.2 to 9 got entered their names in the 7/12 extract. She further alleged that, non-applicants/defendants No.2 to 9 have sold the suit property to deceive her by taking disadvantage of name of applicant is not entered in the 7/12 extract though she is legal heir of her father on 17/05/2023 by registered sale-deed No.1172/2023 which is illegal. Actually, there is no any concern of non-applicants/defendant No.2 to 9 with the suit property. The suit property is in her occupation and possession. So, she prayed that, the non-applicants/defendants restrained from alienating, entry, measurement, construction and creating

third party interest, so also from interfering or disturbing her possession over the suit property.

06) On the other hand, non-applicants/defendants submitted that, plaintiff does not come with the clean hands. She suppressed material things from the court. It is further submitted that, mutation entry No.587 and 589 itself reveals that, suit property is transferred in the name of forefather of defendant by partition and this thing is in knowledge of plaintiff far ago. It is case of non-applicants/defendants that, suit property is in the possession of defendant No.2 to 9 since from 1987 and last from 36 years no one has taken objection to the possession and occupation of the non-applicants/defendants. It is further submitted that, defendant No.1 has been purchased the suit property for the consideration amount of Rs.36,00,000/-. It is alleged that, plaintiff has no any possession or cultivation over the suit property, and only to harass financially and mentally filed this false suit against non-applicants/defendants. Lastly, they prayed that, application be rejected.

07) I considered submissions of both parties along with record. It is case of plaintiff that, suit property is her ancestral property and suit property originally owned by her father Khema Parsu Kadam. It is contention of plaintiff that, the suit property is ancestral property, hence she has right in the suit property. Non-applicants/Defendants contended that, suit property is in possession and cultivation of the defendant No.2 to 9 since from the year 1987 as the suit property transferred in the name of their forefather by partition as per the mutation entry No.587

and 589. Non-applicants/Defendants further contended that, applicant/plaintiff was aware about the mutation entry but did not take any objection for the last 36 years. Now, it is settled principle of law who seeks injunction he must prove prima facie case. Prima facie case means, it should appear on record that, there is a bonafide contest between parties and serious question is required to be tried. In present fact, it appears that, daughter is claiming right in suit property of her father. It is settled law that, daughter can claim her right in the property of her father. Now, question whether such property is ancestral property or not or whether there was partition or not or whether she has right in the suit property or not, it would be decided by recording evidence. At this stage, it is necessary on the part of plaintiff to prove her prima facie case.

08) It is case of applicant/plaintiff that, she is in possession of the suit property. To show the same, she has filed 7/12 extract of suit property in the year 1974 and 1975 which reflects land standing in name of Khema Parsu Kadam her father. She has also filed the 7/12 extract of suit property in the year 1985 and 1986 which reflects suit property standing in the name of Bhiku Pandu Kadam who is the forefather of defendant No.2 to 9. Moreover, extract of mutation entry No.589 shows that, suit property is entered in the name of Bhiku Pandu Kadam in the year 1987, so also 7/12 extract of suit property in the year 2022 and 2023 reflects in the name of defendant Ananta Bhiku Kadam, which shows that, suit property is in the name defendant.

09) I find substance and merit in the argument of learned advocate for non-applicants/defendants because the 7/12 extracts and mutation entry No.589 shows that, suit property transferred in the name father of non-applicants/defendants in the year 1987 and at this stage the facts and documentary evidence as discussed above show that, defendants are in possession of the suit property. And plaintiff has not challenged said 7/12 extracts and mutation entry before the concerned authorities as per Law since last together of year 36. Hence, I hold that, applicant/plaintiff has not made out prima facie case. On the perusal of all documents it is seen that, plaintiff failed to file any documentary evidence of her possession over suit property. Hence, I conclude that, plaintiff failed to show prima-facie case in her favour. Accordingly, I answer point No.1 in negative.

AS TO POINT NO.2 :-

10) As discussed in point No.1 above, I hold that, balance of convenience lies in favour of defendants. Hence, this point is answered accordingly.

AS TO POINT NO.3 :-

11) If injunction would be granted, then there would be irreparable loss of the non-applicant/defendant No.1. But, if injunction is rejected there would not be irreparable loss to applicant/plaintiff. Hence, this point is answered by holding that, there would be irreparable loss to defendants No.1.

AS TO POINT NO. 4 :

12) In view of above discussion, temporary injunction application is liable to be rejected. Hence, I pass following order :-

:-O R D E R:-

- 01) Temporary injunction application (Exh.No.5) is rejected.
- 02) Costs in cause.

(Dictated and Pronounced in open Court)

Place:Pali.
Date :02/05/2024.

(M.W.Jadhav)
Civil Judge, J.D.,Pali.